IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 1463 of 2001(B)

OPMV.1074/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANTS/PETITIONERS
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1. **N.B. OMANA, CHANDRAN, AGED 31 YRS,**
   ADAKKATHU MOOLAYIL VEEDU,
   KAKKANAD, KUSUMAGIRI P.O.,
   COCHIN- 30.

2. **PRASANTH (AGED 13 YRS),**
   MINOR, REP. BY HIS MOTHER OMANA CHANDRAN.

3. **SHYAMA (AGED 9 YERS),**
   MINOR, REP. BY HER MOTHER OMANA CHANDRAN.

4. **PRASOBH (AGED 11 YRS),**
   MINOR, REP. BY HIS MOTHER OMANA CHANDRAN.

BY ADV. SMT.SALLY THOMAS CHACKO

RESPONDENTS/RESPONDENTS
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1. **PAUL VARGHESE, MEUKAMKUNNEL HOUSE,**
   VILANGUES P.O., KIZHAKKAMBALAM,
   PERUMBAVOOR.

2. **MOHANAN, S/O. RAMAN NAIR,**
   THEKKEPPARA VEETTIL, PUTHERKODU DESOM,
   KUNNATHU NADU VILLAGE.

3. **NATIONAL INSURANCE CO. LTD.,**
   MUTHOOR BUILDING, M.G. ROAD,
   COCHIN- 35.

4. **VARUTHU, AGD 85 YRS,**
   S/O. KURUMBAN ADUKKATHU MOOLAYIL,
   KAKKANAD.

BY ADV. SRI.M.A.GEORGE --- R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No.1463 of 2001

Dated this the 31st day of October, 2007

Judgment

Koshy, J.

Husband of the first appellant sustained fatal injuries in a motor accident on 27.11.1995. She along with three minor children applied for compensation amounting to Rs.8,00,000/-. The tribunal has granted Rs.3,28,000/-. The tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle which was insured by the third respondent insurance company. The only dispute is regarding the quantum of compensation.

2. The accident occurred on 27.11.1995 at 7.00 a.m. He sustained serious injuries and was struggling for life for a week and he died on 3.12.1995. According to the claimants, he was a mason by profession and he was earning Rs.150/- per day and he will get 26 days' work in a month and, therefore, his monthly income was Rs.3,900/-. The tribunal fixed monthly income only at Rs.2,000/- as no data was produced. It may not be possible for a mason to get data of income. In Kerala, during 1995, an unskilled

labourer was getting at least Rs.100/- per day. We are of the opinion that at least he would have got Rs.100/- per day and he would have got 20 to 25 days' work in a month. Therefore, his income will be around Rs.2,500/- to Rs.2,600/- per month. After deducting personal expenses, we take Rs.1,650/- as the monthly loss of dependency to the family. He was maintaining his wife and three minor children. The tribunal has taken 17 as the multiplier because he was aged 31 years taking guidance from the second schedule. (See: Three-member Bench decision of the Apex Court in Smt. Supe Dei and others v. M/s. National Insurance Company Limited and another (JT 2002 Supp.1 SC 451) and recent decision in Abati Bezbaruah v. Deputy Director General, Geological Survey ofl India and another ((2003) 3 SCC 148) and A.P.S.R.T.C. v. M. Pentaiah Chary (2007 AIR SCW 5689). We see no ground to interfere in the same. Therefore, compensation payable for loss of dependency will be Rs.1650 x 12 x 17 = Rs.3,36,600/-. The tribunal has awarded Rs.2,75,400/-. So, claimants are entitled to get an additional amount of Rs.61,200/- for the loss of dependency.

3. Even though it was argued that compensation granted under other heads is not adequate, we are of the opinion that just and reasonable compensation was awarded under other

heads. The additional amount of compensation of Rs.61,200/- should be deposited by the third respondent insurance company with 7.5 % interest from the date of application till its deposit over and above the decreed amount by the tribunal. On deposit of the amount, one-third of the amount can be disbursed to the first appellant widow and balance should be deposited in a nationalised bank in equal proportion to the three minor children and can be disbursed to them when they attains the age of 21.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1463 of 2001

Judgment

Dated:31st October, 2007